

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARIUS DE'MON LAKE,  
Plaintiff,  
v.  
A BUSTAMONTE,  
Defendants.

No. 2:23-cv-01310 DB P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. Plaintiff's complaint was filed with the court on July 5, 2023. The court's own records reveal that on the same day, plaintiff filed another civil complaint containing substantially the same allegations and subject matter, see Lake v. Oboyle, et al., No. 2:23-cv-01306 AC P.<sup>1</sup> The civil complaint in Case No. 2:23-cv-01306 AC P was signed by plaintiff a day earlier and was filed first in this court. Due to the duplicative nature of the present action, the court will recommend that the complaint in this action be dismissed, and that plaintiff proceed in the first-filed action. Because plaintiff included an additional defendant (A. Bustamante) in this action, however, the court will order that the complaint in this case be filed as a first amended complaint in Lake v. Oboyle, et al., No. 2:23-cv-01306 AC P.

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<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

For the reasons set forth above, IT IS HEREBY ORDERED as follows:

1. The Clerk of the Court is directed to assign a district judge to this case.

2. The Clerk of the Court is directed to file the complaint in this case (ECF No. 1) as a first amended complaint in Lake v. Oboyle, et al., No. 2:23-cv-01306 AC P.

3. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) in this case is denied as moot, without prejudice to plaintiff's pending application in Case No. 2:23-cv-01306 AC P.

In addition, IT IS RECOMMENDED that this action be dismissed without prejudice. See Fed. R. Civ. P. 41(b).

These findings and recommendations are submitted to the District Judge assigned to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: July 14, 2023

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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE